

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

PHYLLIS REESE

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Plaintiff,

Case No. 4:13CV266

VS.

**BANK OF AMERICA, N.A., as
Successor by Merger to BAC
HOME LOANS SERVICING, LP,**

Defendant.

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On February 24, 2014, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant Bank of America, N.A.'s Motion to Dismiss Plaintiff's Amended Complaint (Dkt. 19) be GRANTED in part and DENIED in part.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the court.

Therefore, Defendant Bank of America, N.A.’s Motion to Dismiss Plaintiff’s Amended Complaint (Dkt. 19) is GRANTED as to Plaintiff’s breach of contract claims which challenge Defendant’s authority; Plaintiff’s claims of fraud; Plaintiff’s claims of intentional infliction of emotional distress; Plaintiff’s claims of violation of the Texas Theft Liability Act (“TLA”); and

Plaintiff's declaratory judgment action and those claims are dismissed with prejudice.

The motion to dismiss is DENIED as to Plaintiff's claims that Defendant breached the Deed of Trust by failing to comply with certain foreclosure provisions and procedures and those claims shall proceed.

IT IS SO ORDERED.

SIGNED this the 28th day of March, 2014.



RICHARD A. SCELL
UNITED STATES DISTRICT JUDGE